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MEMORANDUM FOR: Deputy Director (Administration)

14 APR 53

SUBJECT : Pay Increases Under Public Laws 201 and 375
82nd Congress

1. PROBLEM. -- Public Law 201, approved 24 October 1951, 82nd Congress, established the most recent schedule of salary rates for federal employees. Public Law 375, approved 5 June 1952, 82nd Congress, provided pay increases for CIA employees comparable to those provided by Public Law 201. Both laws were effective retroactively to 8 July 1951. Due to the retroactive features of these Public Laws the Comptroller General of the United States has ruled that action be taken to adjust those salary rates which were fixed on or after 8 July 1951 to conform to those salary rates to which the employees would have been entitled had the salary schedule been approved and applied during that period; furthermore, it is required that compensation pay due employees be adjusted accordingly. A list of the individuals involved and amounts of over-payments is attached (TAB A).

2. FACTS BEARING ON THE PROBLEM. --

- a. During the period from 8 July 1951 to 24 October 1951 (the effective date of Public Law 201) a number of Personnel Actions were effected by the Agency which involved changes in grade. To meet the regulation of Section 802 (b) of the Classification Act of 1949, as amended, and the Civil Service Commission's regulation pursuant thereto, it is required that an individual be given at least one step-increase in compensation when he receives a grade promotion.
- b. In these cases salary rates were determined on the basis of the salary rates by grade as authorized by the Classification Act of 1949. However, these salary rates were at variance with those which would have been proper had the schedule established by Public Law 201 been available for application when the Personnel Actions were effected. For example, employee "A" was promoted on 14 October 1951 from GS-5, 3rd step, \$3350 per annum, to GS-6, 2nd step, \$3575 per annum and, consequently, received increased pay under Public Law 201 based on the 2nd step whereas such increased pay applicable to the 1st step of GS-6 would have been sufficient to comply with the law requiring that an individual be given at least one step-increase in compensation when he receives a grade promotion. In other words, if at the time of that promotion the schedule established by Public Law 201 had been operative and applied, this employee's salary rate in the higher grade would have been fixed at the first step of GS-6, \$3795 per annum instead of at the second step of GS-6, \$3920 per annum.

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- c. On 6 November 1951 the Comptroller General of the United States rendered a decision, No. B-106337, to the Chairman of the Civil Service Commission, stating that this type of promotion made during the retroactive period of Public Law 201 was not proper due to the provisions of the new act. This decision was noted by the Comptroller and Personnel Office but required no action to be taken in view of the fact that on 21 November 1951 the Comptroller General of the United States rendered opinion No. B-106516 to the Director of Central Intelligence stating, in part, that "... under the circumstances, it must be held that the proposed retroactive increases by the Central Intelligence Agency are not necessary to carry out its functions within the meaning of said Section 10 and, therefore, would be subject to legal objection...". Therefore, in view of the fact that Public Law 201 did not apply to CIA, the decision of 6 November 1951 did not apply to CIA.
- d. On 5 June 1952, Public Law 375, 82nd Congress, was approved and provided that all persons in CIA were entitled to pay increases consistent to those provided by Public Law 201 and including the retroactive feature of Public Law 201. It will be noted that the effective date of Public Law 375 was seven months after the issuance of the Comptroller General's decision relative to necessary adjustments which would have to be made due to the variance in the then existing salary rates. Between the date of the decision 6 November 1951 and the date of Public Law 375, 5 June 1952, the possible application of the decision to CIA had been completely lost sight of by all concerned.
- e. A member of the Personnel Office became cognizant of the possible application of Comptroller General's decision of 6 November 1951 to this Agency and inquired of his office, on or about 27 August 1952, if the decision would apply. Thereupon, the Personnel Director on 5 September 1952 addressed a memorandum to the Chiefs, PDC and PDO inviting their attention to this matter and a copy of this memorandum was forwarded to the Fiscal and Finance Division. The Personnel Office made a preliminary check to ascertain if there were any cases involving CIA employees and a study was undertaken to determine if there was any possible basis for interpreting the decision of 6 November as not applicable.
- f. On 12 January 1953 the Personnel Director requested an opinion from General Counsel in this matter and on 2 February 1953 General Counsel rendered a legal opinion

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which stated, in part, "... payments in excess of those permitted under the Comptroller General's Interpretation of Public Law 201 are subject to audit exceptions. We, therefore, believe that it is necessary to request repayments of amounts considered as such overpayments..." Copies of the request for the above opinion and the reply thereto are attached. (TABS B and C)

3. **DISCUSSION.** - The net result of these laws is that certain CIA employees could be required to have their personnel actions adversely adjusted on a retroactive basis for a period of almost one year (5 June 1952 to 3 July 1951). It can thus be seen that this is a most unusual law and its application as interpreted by the Comptroller General is equally unusual. In fact these two laws to our knowledge are the first concerning salary increases which Congress has passed which contained retroactive features.
4. **CONCLUSIONS.** - In view of the fact that the employees involved have received compensation over and above that which normally should have been received but were compensated in good faith and received compensations in good faith, it is recommended that the action requested below be taken in an effort to ascertain whether these repayments may be waived.
5. **RECOMMENDATION.** - It is recommended that representatives of the Comptroller and the General Counsel informally discuss this matter with the General Accounting Office with a view to determine if there is any possible way that restitution may not be demanded from the individuals involved.

STATINTL

Deputy Comptroller

ADDRESSES:

- TAB A - List of individuals and amounts of overpayments
- TAB B - Memo dated 12 January 1953 to General Counsel
- TAB C - Legal Opinion of General Counsel dated 2 February 1953

CONCUR

General Counsel

Personnel Director

ACTION BY APPROVING AUTHORITY

Date

Apr. 14, 1953

Approved (disapproved), exceptions, if any.